

DOCKET NO. 91-494-W - ORDER NO. 94-726 ✓

IN RE: Application of South Atlantic) ORDER AFFIRMING
Utilities, Inc. for Approval of) ORDER NO. 94-395
an Increase in Rates and Charges.)

This matter comes before the Public Service Commission of South Carolina (the Commission) pursuant to a hearing granted by us in this docket in our Order No. 94-482, dated May 25, 1994. In that Order, we examined a Petition for Hearing and/or Reconsideration filed by South Atlantic Utilities, Inc. (South Atlantic or the Company) which formally asked for hearing or reconsideration of our Order No. 94-395, wherein the utility was ordered to stop charging Mr. Robert Kieffer (Kieffer), of May River Plantation, an availability fee.

The Company had charged Kieffer an availability fee even after he dug his own well and gotten off of South Atlantic's water system. The Company contended that it had the right to continue charging Kieffer this availability fee. Kieffer disagreed, and in Order No. 94-395, this Commission ordered the Company to discontinue billing Kieffer for the availability fee. In Order No. 94-482, we did recognize that Kieffer's well could one day become inoperative, and Kieffer could desire to reconnect to the water system. The Commission decided to set for hearing the issue of whether or not an availability fee, chargeable to Kieffer, was just

and correct under this circumstance. We noted that the Commission had not previously considered the issue of a utility charging an availability fee to a customer who has gone off the Company's system, and who has dug his own well.

Pursuant to Order No. 94-482, a hearing was held on July 13, 1994, in the offices of the Commission before a panel of three Commissioners with the Honorable Rudolph Mitchell, Chairman, presiding. South Atlantic Utilities appeared, as did the Respondent, Robert P. Kieffer. Thomas Smith, III, a corporate officer of South Atlantic Utilities, Inc., presented evidence for the Company. Robert P. Kieffer appeared pro se. The Consumer Advocate for the State of South Carolina was represented by Elliott F. Elam, Jr., Esquire, who presented no witnesses. The Commission Staff was represented by F. David Butler, General Counsel, who presented the testimony of Charles A. Creech, Chief of the Water/Wastewater Department, Utilities Division.

South Atlantic presented testimony through a corporate officer, Thomas Smith, III. Smith stated that, due to the fact that Kieffer might some day want to return to the South Atlantic Water system, that South Atlantic should have the ability to charge Kieffer an availability fee of \$12.00 per month. Smith noted that South Atlantic had continued to bill Kieffer since the 1991 rate case, and said charges for availability fees now total approximately \$190.

Smith stated that he believed that the Commission had changed its position with regard to availability fees. In Order No. 93-511, the Commission held that any disputes over availability

fees should be settled in another forum, such as a Court of Law. However, Smith also noted that in Order No. 94-395, the Commission changed its position, and held that the availability fee was a part of the definition of a rate, thereby giving the Commission jurisdiction over the dispute. Smith stated his belief that Kieffer should pay an availability fee, due to the potential for future use of the system by him, despite the fact that he has now dug his own well and has gone off the system.

Robert P. Kieffer testified in the case, and stated that he was a customer of South Atlantic Utilities from June 1978 through December 1992, when he terminated his water service. According to Kieffer, he did so after Smith stated at the hearing at Columbia in November 1992 that Kieffer would not be charged a monthly fee if he wanted to get off of the South Atlantic Utilities system and dig his own well. Kieffer stated that, in reliance on this testimony, he dug his own well in late November 1992 and notified Smith to discontinue service to him as of December 31, 1992. Kieffer testified that South Atlantic's employees shut off his water on January 4, 1993, and did not charge anything for the months of January and February of 1993. Kieffer stated that on March 12, 1993, however, Smith sent a copy of a letter to all May River Plantation customers that he had "decided to keep the availability fee for water service at \$12.00 per month." Kieffer testified that Smith has, since March 1, 1993 debited a charge of \$12.00 per month to him, claiming a balance now due for availability fee in excess of \$190.00.

Kieffer states his belief that since he has been off the South

Atlantic system since December 31, 1992, he did not owe South Atlantic anything for service since that time, nor for service in the future, unless he returned to using water from the South Atlantic system.

The Commission Staff presented the testimony of Charles Creech, Chief of the Commission's Water/Wastewater Department. Creech related the history of the availability fee as shown by Commission mandate and Order, and stated his complete agreement with the Commission's reasoning in Order No. 94-395, in which the Commission held that Kieffer owed no availability fee, since he was off the South Atlantic system. Creech stated that, in his opinion, an availability fee is a fee normally collected by developer or utility from lot owners prior to the receipt of service to ensure availability of water and/or sewer service when a new home was built on a particular lot. Creech stated his belief that an availability fee should not apply in a case such as the present one where the owner was a water service customer who then dug his own well and got off the water system. Creech also noted that if Kieffer indeed needed to get back on the system in the future, he felt that South Atlantic Utilities should be able to collect a fee at that time.

Under cross-examination, Creech stated that the fee involved should be somewhat related to a reconnect fee, but that its exact determination should be done at such time as Kieffer might want to return to the South Atlantic system. Creech further stated his belief that the Commission's decision in this case should not necessarily set a precedent for the application of availability

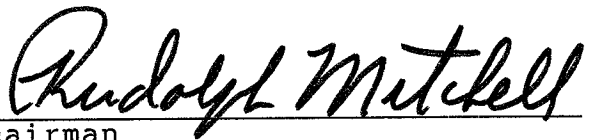
fees in future cases. He noted that the application of availability fees should be examined on a case-by-case basis, and that the facts of each case should be considered by the Commission before it decides whether or not the concept of availability fees is appropriate for that case. Mr. Creech further opined that in the present case, he simply did not believe that an availability fee was appropriate for a former customer, even though he did believe that the utility owners should be able to collect a fee if reconnection ever comes about.

The Commission has examined this matter and hereby affirms its holding in Order No. 94-395. We agree with the reasoning of Charles Creech, and believe that the concept of availability fees should not apply under the circumstances of the case at bar where a customer has dug his own well and gotten off of a particular water system. We do believe that South Atlantic should be able to levy a charge at such time as Kieffer might desire to return to the system. However, we take no position, at this time, as to the how the charge should be formulated. We will examine the formulation of that charge if, and when it becomes appropriate.

Further, we take administrative notice of the transcript of the November 1992 hearing in this case. Although, we do believe that the testimony is somewhat ambiguous, we agree with Kieffer that Smith promised at the time of that hearing that he would not charge Kieffer a monthly fee if Kieffer got off the system. We believe Kieffer had his well dug in reliance on Smith's testimony at that hearing. Therefore, we do not think it is appropriate for Kieffer to be charged an availability fee at this time. Our

holding in Order No. 94-395 is hereby affirmed. South Atlantic Utilities, Inc. shall hereby cease and desist from charging Robert Kieffer an availability fee in the future. Further, the approximately \$190 presently alleged to be owed by Kieffer in availability fees shall hereby be removed from the utility's books and forgiven. Should Kieffer desire to return to the system, the utility may petition the Commission for the establishment of a fee for reconnecting him. We also hold that our rejection of the availability fee in this case applies only to the facts of this case at this time. Other circumstances could dictate different results. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)